

Testimony of U.S. Senator Byron Dorgan  
before the U.S. House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security  
Hearing on Legislation to Improve the Collection of Federal Court-Ordered Restitution

April 3, 2008

Chairman Scott and Ranking Member Gohmert, I would like to thank you for holding a hearing today to examine proposals to improve the collection of unpaid federal court-ordered restitution, including bipartisan legislation I have authored with Senator Grassley in the Senate called the Restitution for Victims of Crime Act, S. 973. Representative Chabot and Representative Carol Shea-Porter have introduced related measures in the U.S. House.

As all of us know, victims of crime and their families often face a significant challenge trying to rebuild their lives and recover a sense of emotional and financial security after a crime has been perpetrated against them. By law, victims of federal crimes are entitled to “full and timely restitution” for losses from a convicted offender.

Unfortunately, new data from the Department of Justice shows that the amount of uncollected federal criminal debt is still spiraling upward – jumping from \$6 billion in 1996 to more than \$50 billion by the end of fiscal year 2007. That’s a more than eight-fold increase in uncollected criminal debt owed to the victims of federal crimes.

Government Accountability Office (GAO) investigators found that federal criminal justice officials collected an average of only four cents on every dollar of criminal debt that was owed to crime victims in 2000, 2001 and 2002.

These figures are disheartening, and the victims of crime in this country deserve better. Crime victims should not have to worry if those in charge of collecting court-ordered restitution on their behalf are making every possible effort to do so before criminal offenders have the opportunity to fritter away their ill-gotten gains on lavish lifestyles and the like. This matter is not mere speculation.

At my request, the GAO reviewed five white collar financial fraud cases with outstanding unpaid restitution. GAO found:

- Crime perpetrators who owed restitution taking expensive trips overseas.
- Convicted criminals living in million dollar mansions in upscale neighborhoods, but not making their court-ordered restitution payments.
- Criminals who fraudulently obtained millions of dollars in assets were using those assets to buy expensive clothing instead of paying restitution they owed.
- Criminals spending thousands of dollars per month in entertainment, even though court ordered restitution went unpaid.

- Convicted criminals who had taken their ill-gotten gains and established businesses for their children in order to avoid the payment of court ordered restitution.

S. 973 will give Justice Department officials the tools they have requested to help them do a better job collecting court-ordered federal restitution and fines. Our bill includes provisions that will remove many existing impediments to increased collections. For example, Justice Department officials have described a circumstance where they were prevented by a court from accessing \$400,000 held in a criminal offender's 401(k) plan to pay a \$4 million restitution debt to a victim because that court said the defendant was complying with a \$250 minimum monthly payment plan, and that payment schedule precluded any other enforcement actions. S. 973 would remove impediments like this in the future.

This legislation also addresses a major obstacle identified by the GAO for officials in charge of criminal debt collection; that is, many years can pass between the date a crime occurs and the date a court orders restitution. This gives criminal defendants ample opportunity to spend or hide their ill-gotten gains. That is why S. 973 provides for pre-conviction procedures for preserving assets for victims' restitution. This will help ensure that financial assets in control of a criminal defendant are available when a court imposes a final restitution order on behalf of a victim.

As a safeguard, our bill allows a criminal defendant to challenge a court's pre-judgment asset preservation order. For example, a defendant may challenge a post-indictment restraining order if he or she can show that there is no probable cause to justify the restraint. In a similar manner, our proposal includes language that guarantees that an accused party will have access to adequate resources for attorney fees or reasonable living expenses from the time of indictment through the criminal trial.

These pre-conviction procedures for preserving assets for victims' restitution will prevent criminal defendants from spending or hiding their ill-gotten gains and other financial assets. These tools are similar to those already used successfully in some states, by federal officials in certain asset forfeiture cases, and upheld by the courts.

Key provisions of S. 973 would do the following:

- Clarify that court-ordered federal criminal restitution is due immediately in full upon imposition, just like in civil cases, and that any payment schedule ordered by a court is only a minimum obligation of a convicted offender.
- Allow federal prosecutors to access financial information about a defendant in the possession of the U.S. Probation Office – without the need for a court order.
- Clarify that final restitution orders can be enforced by criminal justice officials through the Bureau of Prisons' Inmate Financial Responsibility Program.
- Ensure that if a court restricts the ability of criminal justice officials to enforce a financial judgment, the court must do so expressly for good cause on the record. Absent exceptional circumstances, the court must require a deposit, the posting of a bond or impose additional restraints upon the defendant from transferring or dissipating assets.

- Help ensure better recovery of restitution by requiring a court to enter a pre-conviction restraining order or injunction, require a satisfactory performance bond, or take other action necessary to preserve property that is traceable to a charged offense or to preserve other nonexempt assets, if the court determines that it is in the interest of justice to do so.
- Permit the Attorney General to commence a civil action under the Anti-Fraud Injunction Statute to enjoin a person who is committing federal offense that may result in a restitution order; and permit a court to restrain the dissipation of assets in any case where it has power to enjoin the commission of a crime, not just in banking or health care fraud as permitted under current law.
- Allow the United States under the Federal Debt Collections Procedure Act to use prejudgment remedies to preserve assets in criminal cases that are similar to those used in civil cases when it is needed to preserve a defendant's assets for restitution. Such remedies, including attachment, garnishment, and receivership, are not currently available in criminal cases because there is no enforceable debt prior to an offender's conviction and judgment.
- Clarify that a victim's attorney fees may be included in restitution orders, including cases where such fees are a foreseeable result from the commission of the crime, are incurred to help recover lost property or expended by a victim to defend against third party lawsuits resulting from the defendant's crime.
- Allow courts to order immediate restitution to those that have suffered economic losses or serious bodily injury or death as the result of environmental felonies. Under current law, courts can impose restitution in such cases as a condition of probation or supervised release, but this means that many victims of environmental crimes must wait for years to be compensated for their losses, if at all.

The Restitution for Victims of Crime Act has been endorsed by a number of organizations concerned about the well-being of crime victims, including: The National Center for Victims of Crime, Mothers Against Drunk Driving, the National Organization for Victims Assistance (NOVA), the National Alliance to End Sexual Violence, Parents of Murdered Children, Inc., Justice Solutions, the National Network to End Domestic Violence, the National Association of VOCA Assistance Administrators (NAVAA) and the National Crime Victim Law Institute. United States Attorney Drew Wrigley in Fargo, North Dakota has said this legislation "represents important progress toward ensuring that victims of crime are one step closer to being made whole."

Last fall, the Senate passed by unanimous consent a Dorgan-Grassley amendment on the Senate floor. This amendment contained all of S. 973 except the bill's environmental crimes title. I hope that members of the House Judiciary Crime Subcommittee and the members of the Full Committee will also agree that the current state of our federal criminal debt collection effort is not acceptable, and that this legislation is a serious effort to improve it.

April 13 marks the beginning of *National Crime Victims' Rights Week*, an annual commemoration that has been observed since the early 1980s to honor crime victims and call attention to their plight. One way to show our support would be to pass legislation to ensure that victims of crime and their families are given the compensation they are rightly owed.

Mr. Chairman and Ranking Member Gohmert and other members of subcommittee, I look forward to working with you to address any questions about our legislation and to send a clear message to white collar and other criminals: if you commit a crime you will be held accountable and will not be allowed to benefit in any way from your criminal activity and ill-gotten gains.